

Amendment No. 1 to HB2693

Chumney
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FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

AMEND Senate Bill No. 2529*

House Bill No. 2693

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 71-3-533, is amended by deleting that section in its entirety.

SECTION 2. Tennessee Code Annotated, Title 71, Chapter 3, Part 5, is amended by adding the following as an appropriately designated section:

(___) Criminal history violation information required of persons having access to children; Review of vulnerable persons registry; Verification; Exclusion from access to children.

(a)(1)Each person:

(A) applying to work with children as a paid employee with a child care agency as defined in this section, or with the department in any position in which any significant contact with children is likely in the course of the person's employment; or

(B) who operates or manages or seeks to operate or manage (hereafter referred to as "operator") a child care agency; and who has contact with children in the course of such role with a child care agency and is not otherwise exempted from application of this act by rules of the department; or

(C) a new volunteer who is expected to provide volunteer services in excess of twenty (20) hours per month in a child care agency, or with the department, in any position in which any significant contact with children is likely in the course of the person's volunteer service; or

(D) any person aged fifteen (15) years and above who resides in a child care agency which is being licensed initially or who moves into a child care agency following initial licensure,

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2529*

House Bill No. 2693

shall complete a criminal history disclosure form in a manner approved by the department, and shall agree to release all records involving the person relating to the criminal history of such person to the child care agency and to the department of human services for the purpose of verifying the accuracy of criminal violation information contained on the disclosure form required by this section.

(2)(A) Such persons shall also supply a fingerprint sample in a manner prescribed by the Tennessee bureau of investigation, and shall submit to a fingerprint based criminal history records check to be conducted by the Tennessee bureau of investigation, and shall submit to a review of such person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10.

(B) The entity which is seeking to employ the person; or which is seeking to permit the person to volunteer; or for which the person is an operator or seeks to be an operator; or which has a person residing in the agency shall be responsible for obtaining, and submitting the fingerprint sample and any information necessary to process the criminal history review, to the Tennessee bureau of investigation within ten (10) days of the first day of beginning employment , operator status, or volunteer status, or, for residents of agencies, within ten (10) days of the application for an initial license for the facility in which the person resides or within ten (10) days after the resident moves into the child care agency.

(3) The disclosure forms shall include at a minimum the following information:

(A) The social security number of the applicant, operator, resident or volunteer;

(B) The complete name of the applicant, resident , or operator or volunteer;

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2529*

House Bill No. 2693

(C) Disclosure of information relative to any violations of the law, including pending criminal charges of any kind, and any conviction involving a sentence or suspended or reduced sentence a release of all records involving the person's criminal background history; and

(D) A space for applicant, operator, volunteer or resident to state any circumstances which should be considered in determining whether to allow the person who has a criminal history to be employed or to remain as a resident in the agency or to provide volunteer services.

(4)The form shall notify the applicant, operator, volunteer or resident that falsification of required information may subject the person to criminal prosecution, and that the person's employment or operator or volunteer status with the agency or the department is conditional pending a criminal records history review regarding the person's criminal history status. The form shall also state, for the department of human services, that if the person is a resident of the child care agency, that a finding of criminal history may affect the agency's ability to remain licensed or to renew a license if the person remains as a resident of the agency.

(5) A copy of the disclosure form shall be maintained in the child care agency's records for review by the department, and the department shall maintain a copy of the disclosure form in the records of the applicant for licensure, employment or volunteer services with the department.

(b)(1) The disclosure form, or information contained on the form, obtained pursuant to this section, together with the fingerprints of the applicant, operator, volunteer or resident shall be

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2529*

House Bill No. 2693

submitted by the child care agency for its applicants, operators, volunteers or residents, and by the department for its applicants, to the Tennessee bureau of investigation in such format as required by the bureau.

(2)(A) The Tennessee bureau of investigation shall compare the information and the fingerprint sample received with the computer criminal history files maintained by the bureau and to the extent permitted by federal law, with federal criminal databases, to verify the accuracy of the criminal violation information, and shall conduct the fingerprint and criminal history background check for the person pursuant to § 38-6-109. It shall report the existence of any criminal history involving the person to the requesting child care agency which submitted the form and the fingerprint sample.

(B) If the history and sample were submitted by a licensed child care agency, a copy of a report which has indicated the existence of a criminal history shall also be sent to the department.

(C) The bureau shall also report the existence of a criminal history of the person to the department for persons whom the department has submitted.

(3) The results of the inquiry to the Tennessee bureau of investigation shall be recorded in the records of the child care agency for the person for whom the background check is sought.

(4) If the information on the form appears to have been falsified, the Tennessee bureau of investigation shall report such finding to the department. The department shall notify in writing the appropriate district attorney general of such falsification.

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

AMEND Senate Bill No. 2529*

House Bill No. 2693

(5)(A) The department of human services shall pay to the Tennessee bureau of investigation the cost of processing the criminal history background fingerprint check requested by the agency or by the department as set forth in § 38-6-109. Payment of such costs are to be made in accordance with § 38-6-103 and 38-6-109.

(B) The child care agency shall be responsible for all costs associated with the obtaining, handling and processing of the fingerprint sample which is submitted to the Tennessee bureau of investigation.

(C) The department shall only be responsible for payment for one (1) processing fee that is required by the Tennessee bureau of investigation. If the fingerprint sample is rejected, and if any further costs are required to process the fingerprint, the child care agency is responsible for any further costs, regardless of the number of efforts required to obtain a valid fingerprint sample.

(c) The agency, and the department for its employees, shall also utilize the information on the criminal history disclosure form to conduct an inquiry of the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10 for a review of the person's status on such registry. The results of the inquiry to the registry shall be maintained in the applicant's, operator's, volunteer's or resident's records.

(d) Pending the outcome of the fingerprint background check and the review of the department of health's vulnerable person's registry, the applicant for employment, for operator status or for a volunteer services position shall be conditional with the agency or with the department, and shall be dependent upon the outcome of the background check.

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2529*

House Bill No. 2693

(e)(1)(A)(i) Conviction of an offense, or a lesser included offense, involving the physical, sexual or emotional abuse or gross neglect of a child or which constitutes conviction of an offense involving violence against a child, or any person, or conviction of an offense determined by the department, pursuant to properly promulgated rules, to present a threat to the health or safety of children, or a no contest plea to such offenses, and any pending warrants, indictments or presentments for such offenses, or the identification of the individual on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, shall disqualify the individual from employment with, from serving as an operator for, or from providing any volunteer services to children in, or from having any access whatsoever to children as a resident of, a child care agency as defined by this part, or with the department.

(ii) Any offense and any pending warrants, indictments or presentments involving driving under the influence of an intoxicant during which a child was in the vehicle of the person on whom the criminal background check was obtained, or any felony offense, and any pending warrants, indictments or presentments for any felony offense, involving such person in which the person caused, allowed or permitted a child to be present, shall disqualify the person from providing care or transportation for any child in the child care agency.

(B)(i) Upon receipt of the report from the Tennessee bureau of investigation, the child care agency shall immediately review the report to determine if the person for whom the criminal background check was requested is within the prohibited categories under subdivision (A), and, if necessary, shall immediately consult with the department to further determine if the individual is within the prohibited categories in subdivision (A).

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2529*

House Bill No. 2693

(ii) The child care agency, and the department for its employees, shall immediately exclude an individual from employment, serving as an operator, volunteer services or, if a resident, shall exclude the resident from access to children in the child care agency, if the results of the criminal background check or review of the vulnerable person's registry demonstrate to the agency, or upon further review by the department demonstrate, that the criminal history of such individual is within the prohibited categories established in subdivision (A). If an exemption from the exclusion is provided for by rule of the department pursuant to subsection (f), such person shall remain excluded until it is determined by the department whether there is a basis for an exception from the exclusion.

(iii) The failure of a child care agency to exclude a person with a prohibited criminal history at child care agency from employment with the agency, from serving as an operator or from the provision of volunteer services to children in the agency, or the failure, as determined by the department, to adequately restrict the access of a resident in a child care agency to children being cared for by the agency, shall subject the child care agency to immediate suspension of the agency's license by the department.

(2) Any person who is excluded based upon the results of the criminal history background review may appeal the exclusion to the department within ten (10) days of the mailing date of the notice of such exclusion to the subject person.

(3) If timely appealed, the department shall provide an administrative hearing pursuant to title 4, chapter 5, part 3 in which the appellant may challenge the accuracy of the report,

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2529*

House Bill No. 2693

and may challenge the failure to grant an exception to the exclusion required by this subsection if a rule for such purpose has been promulgated by the department pursuant to subsection (f).

(4) The appellant may not collaterally attack the factual basis of an underlying conviction except to show that he/she is not the person identified on the record. Further, except to show that he/she is not the person identified on the record, the appellant may not collaterally attack or litigate the facts which are the basis of a reported pending criminal charge except to show that such charge was, or since the report was generated, has been dismissed, nolleed or has resulted in an acquittal.

(f)(1) A state agency as listed in subsection (g)(1) may by rule provide for a review process which utilizes an advisory group of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and child care providers to consider exemptions from the criminal background or the vulnerable persons registry review exclusion established by this section.

(2) Any exemption granted must be based upon extenuating circumstances which would clearly warrant consideration of such exemption and such determination shall be made in writing in the record of the department and of the child care agency and shall be open to public inspection.

(3) If an exemption rule is promulgated by the state agency, the person who is not granted an exception to the exclusion upon review of the person's criminal history may have this issue considered in an administrative appeal as provided by subsection (e).

(g)(1)(A)(i) a child care agency as defined in this section,

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

AMEND Senate Bill No. 2529*

House Bill No. 2693

- (ii) the department of children's services,
- (iii) the department of education,
- (iv) the department of human services,
- (v) the department of mental health/mental retardation, and
- (vi) any other state agency or any person or entity that contracts with the state of

Tennessee,

may require all persons:

(B)(i) applying to work, serve as an operator, or volunteer, or currently working, in any capacity as a paid employee, operator, or volunteering, with children with the entities in subdivision (A); or

(ii) an applicant for a foster parent position or an applicant to be an adoptive parent, or a current foster parent or a current prospective adoptive parent with the department of children's services; or

(iii) a person fifteen (15) years of age or older who resides in a child care agency licensed pursuant to this part,

and who are not otherwise required by the provisions of subsection (a)(1) of this section or who are not otherwise required by any other provision of law to undergo a criminal background check of any kind, to complete a criminal history disclosure form and agree to release all records involving the person relating criminal history of such person to the entities described in subdivision (1)(A) and, if further required by the requesting entity, to supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee bureau of

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2529*

House Bill No. 2693

investigation, and to submit to a review of the person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10;

(C) Nothing in this subsection shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment or for volunteer service positions is made voluntary, repealed or superseded in any manner by the provisions of this subsection, and the provisions of this section are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.

(2) The disclosure form shall contain the information described in subsection (a)(3) and (4).

(3) A copy of the disclosure form shall be maintained in the requesting entity's records of the persons for whom the background check is sought.

(4)(A) The form obtained pursuant to this section, together with the fingerprints of the person shall be submitted by the entity authorized by this subsection to do so, to the Tennessee bureau of investigation in such format as required by the bureau.

(B) The Tennessee bureau of investigation shall compare the information received and the fingerprints of the individual with the computer criminal history files maintained by the bureau and, to the extent permitted by federal law, with federal criminal databases to verify the accuracy of the criminal violation information pursuant to § 38-6-109, and shall report the existence of any criminal history involving the person to the requesting entity, and if the report was made to an entity which is licensed by any state

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2529*

House Bill No. 2693

agency, the bureau shall also send a copy of the report showing the criminal history to the state agency.

(C)(i) Pending the outcome of the background check, if required, the applicant for employment, operator status, or as a foster parent or as an adoptive parent, for contract services, or for a volunteer services position, shall be conditional with the child care agency, the state contractor or with the state agency, and shall be dependent upon the outcome of the background check.

(ii) The employment or operator status of persons for whom a post-employment criminal background check was conducted, or the status of volunteers or residents of a child care agency for whom criminal background check was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check and the exclusionary provisions provided in this section, shall be governed by any regulations which may govern their status in a regulated entity or by applicable employment law.

(D) The results of the inquiry to the Tennessee bureau of investigation shall be maintained by the entity requesting the background check in the records of the person for whom the background check is sought.

(E) If the information on the form appears to have been falsified, the Tennessee bureau of investigation shall report such finding to the requesting entity. That entity, or if the entity is licensed by a state agency, the state agency, shall notify in writing the appropriate district attorney general of such falsification.

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

AMEND Senate Bill No. 2529*

House Bill No. 2693

(F) Any costs incurred by the Tennessee bureau of investigation in conducting such investigations of such applicants shall be paid by the entity which requests such investigation and information. Payment of such costs is to be made in accordance with the provisions of § 38-6-103 and § 38-6-109.

(5) The requesting entity may also utilize the information on the form to conduct an inquiry of the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10 for a review of the person's status on such registry. The results of the inquiry to the registry shall be maintained in the applicant's, employee's, volunteer's or resident's records.

(h)(1)(A) As a supplemental method of criminal background history review for any applicants for employment, operator status, or volunteer status with child care agencies, or with the state agencies or their contractors, as listed in subsection (g)(1) or with the entities which the state agencies may regulate, or for residents of new child care agencies, or for current employees or volunteers of child care agencies or for current residents of child care agencies, those entities listed in subsection (g)(1) which have an agreement for access to the Tennessee bureau of investigation's criminal history database, may require such persons to submit a disclosure form as set forth in subdivisions (a)(3) and (a)(4), a copy of which shall be maintained with the requesting entity's records, and agree to release all records involving the person relating criminal history of such person.

(B) Those entities with such an agreement may then access directly the Tennessee bureau of investigation's Tennessee Crime Information Computer (T.C.I.C.) system and conduct a name search of Tennessee criminal history records by using only the information

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2529*

House Bill No. 2693

contained on the disclosure form completed pursuant to subdivision (A), or using any other information available to the searching entity.

(2) If information obtained by this method indicates that there exists, or may exist, a criminal record on the individual, the entity conducting the search may further review the criminal record history with the individual and, as appropriate, with the entity with whom the individual who is the subject of the review is associated, to obtain further verification. The requesting entity, at its own cost, may also request fingerprint samples as otherwise authorized by this section and submit the fingerprints for a complete Tennessee and federal criminal history background review pursuant to this section and § 38-6-109.

(3) The results of the search shall be maintained in the records of the person on whom the search was made and shall be subject to review by the regulating entities.

(4) Nothing in this subsection shall be construed to mean that any other law which mandates that criminal background checks be conducted on applicants for employment or for volunteer service positions is made voluntary, repealed or superseded in any manner by the provisions of this subsection, and the provisions of this section are supplementary to, and are not in lieu of any mandatory provisions for such other statutorily required criminal background checks.

(i)(1)(A)(i) For criminal history information which is obtained by the processes established under subsections (g) and (h), conviction of an offense, or a lesser included offense, involving the physical, sexual or emotional abuse or gross neglect of a child or which constitutes conviction of an offense involving violence against a child or any person or conviction of a crime determined by the department, pursuant to properly promulgated

FILED
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Time _____
Clerk _____
Comm. Amdt. _____

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

AMEND Senate Bill No. 2529*

House Bill No. 2693

rules, to prevent a threat to the health or safety of children, or a no contest plea to such crimes, and any pending warrants, indictments or presentments for such crimes, or the identification of any person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, shall disqualify such person from employment with, serving as an operator for, or from providing any volunteer services to children in, or from having any access whatsoever to children as a resident of, a child care agency or the requesting agency.

(ii) Any offense and any pending warrants, indictments or presentments involving driving under the influence of an intoxicant during which a child was in the vehicle of the person on whom the criminal background check was obtained, or any felony offense, and any pending warrants, indictments or presentments for any felony offense, involving such person in which the person caused, allowed or permitted a child to be present, shall disqualify the person from providing care or transportation for any child in the child care agency.

(2) The entity shall immediately exclude an individual from employment, serving as an operator or volunteer services with children, or, if a resident, from access to children in a child care agency if the results of the criminal background check demonstrate, that the criminal history of such individual is within the prohibited categories established in subdivision (A). If an exemption from the exclusion is provided for by rule of the state agency pursuant to subsection (f), such person shall remain excluded until it is determined by the department whether there is a basis for an exception from the exclusion.

Amendment No. 1 to HB2693

**Chumney
Signature of Sponsor**

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2529*

House Bill No. 2693

(iii) The failure of a child care agency to exclude a person with a prohibited criminal history from employment with the agency, serving as an operator, or from the provision of volunteer services to children, or the failure, as determined by the regulating entity, to adequately restrict the access to children being cared for by the regulated entity, shall subject the regulated entity to immediate suspension of the entity's license or certificate by the regulating entity

(j) Any person disqualified based upon the results of the criminal history background review under subsections (g) and (h) may appeal that determination to a state agency which has made the request as provided in subdivisions (e)(2)-(e)(4).

(k) It is unlawful for any person to falsify any information required on the disclosure form required by this section. A person who knowingly fails to disclose on the disclosure form required information or who knowingly discloses false information or who knowingly assists another to do so shall be guilty of a Class A misdemeanor.

(l) All information that the department receives pursuant to this section shall be confidential and shall not be a public record, but shall be used by the department and those persons authorized to receive the information for purposes under this part directly related to child safety.

(m) There shall be no liability for negligence on the part of a child care agency or a state or local agency, or employees of either, arising from any action taken or omission of such persons or entities in carrying out the provisions of this section. This immunity shall not extend to gross negligence, or willful, malicious, or criminal acts or acts done for personal gain.

Amendment No. 1 to HB2693

Chumney
Signature of Sponsor

AMEND Senate Bill No. 2529*

House Bill No. 2693

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

(n) For purposes of this section, a "child care agency" includes the following entities licensed by the department of human services: "child care center," "family child care home," "group child care home," and "prescribed child care center,"

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

45. This act shall take effect on July 1, 2000, the public welfare requiring it.